

# ENVISAGE LAW

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**BY ECF**

November 27, 2023

The Honorable Jessica G.L. Clarke  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Berenson v. Biden, et al.*, No. 23 Civ. 3048 (JGLC)  
Diversity of Citizenship Jurisdiction Under 28 U.S.C. § 1332

Dear Judge Clarke:

Our law firm represents Plaintiff Alex Berenson in the above-referenced action. In accordance with section 3(c)(i) of the Court's Individual Rules and Practices in Civil Cases, and in advance of the parties' November 30, 2023 Initial Pretrial Conference, Mr. Berenson submits this letter providing the basis for his belief that this Court has diversity of citizenship jurisdiction over this case under 28 U.S.C. § 1332.

Alex Berenson is an independent journalist and former *New York Times* reporter who earned a significant following on the social media platform Twitter (now X Corp.) for his reporting on the COVID-19 pandemic. This case involves Defendants' efforts to take Mr. Berenson's Twitter platform away because of his disfavored, constitutionally protected reporting on COVID-19 and the COVID-19 vaccines. Mr. Berenson brings claims under the First Amendment, 42 U.S.C. § 1985(3), and for tortious interference with contract. Mr. Berenson asserts that this Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331 (federal question) and supplemental jurisdiction over his state law claims under 28 U.S.C. § 1367 (supplemental jurisdiction), (Dkt. 3 ¶ 40), as well as diversity of citizenship jurisdiction under 28 U.S.C. § 1332, (Dkt. 3 ¶ 41).

Regarding diversity of citizenship jurisdiction, Mr. Berenson is a New York resident. (*Id.* ¶ 29.) He alleges that Defendants Scott Gottlieb, M.D. and Albert Bourla, P.h.D., D.V.M are both Connecticut residents, (*id.* ¶¶ 34-35), and that Defendant Andrew Slavitt resides in California, (*id.* ¶ 31). The governmental defendants sued in their individual capacities, Robert Flaherty and Surgeon General Vivek Murthy, reside in Washington, DC and/or outside of the State of New York. (*See* Dkt. 23 ¶¶ 2, 7.) President Biden, Dr. Murthy, and Mr. Flaherty, sued in their official capacities, work for agencies or departments located in Washington, DC. (*Id.* ¶ 1, 5); *see also* 13E Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 3620 (3d ed.) ("When a federal official is sued in an official capacity, for example, citizenship will be determined for diversity jurisdiction purposes in terms of the location of the agency or

The Honorable Jessica G.L. Clarke

November 27, 2023

Page 2 of 2

department with which the employee is affiliated.”). There is complete diversity of citizenship between New York resident Mr. Berenson and the Defendants.

Further, Mr. Berenson alleges there is greater than \$75,000 in controversy in this case. (Dkt. 3 ¶ 41.) Among other things, Mr. Berenson asserts that Defendants’ actions, which caused his deplatforming on Twitter, damaged him by cutting him off from his audience to which he lost the opportunity to promote his longer form journalism on Substack and his upcoming book. (*Id.* ¶ 176.) This alone is sufficient to establish more than \$75,000 in controversy in this case. *Cf. Burr ex rel. Burr v. Toyota Motor Credit Co.*, 478 F. Supp. 2d 432, 439 (S.D.N.Y. 2006) (finding amount in controversy requirement met in personal injury case where it was “evident from the face of the Complaint that Plaintiffs’ claim will exceed seventy-five thousand dollars”). In addition to injunctive relief, Mr. Berenson also seeks punitive, general, and special damages, further pushing the amount in controversy above \$75,000. (Dkt. 3, Prayer for Relief, ¶¶ E, F.)

Given there is complete diversity of citizenship between Mr. Berenson and the Defendants, and more than \$75,000 in controversy in this dispute, Mr. Berenson contends that this Court has diversity of citizenship jurisdiction over this case under 28 U.S.C. § 1332.

Respectfully,

By: /s/ James R. Lawrence, III

James R. Lawrence, III\*

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cc: Counsel for the Parties  
(via ECF)